

“DRAFT” Shasta Lake Water Resources Investigation (SLWRI) Meeting “DRAFT”
with the
Winnemem Wintu and the Bureau of Reclamation
Village of Kerekmet, Shasta County, California
Wednesday, July 14, 2004

Winnemem Wintu

Caleen Sisk-Franco	Spiritual Leader
Mark Franco	Headman, Village of Kerekmet
Mark Miyoshi	
Gary Mulcahy	
Brock Dahlman	Fisheries Biologist
Claire Cummings	Legal Counsel

Reclamation (Mid-Pacific Region)

Donna Garcia	Project Manager, SLWRI, (916) 978-5009
Jim West	Regional Archeologist, (916) 978-5041
Russ Smith	Chief, Environmental Resources Division, Northern California Area Office (NCAO), (530) 275-2441
Frank Perniciaro	Native American Affairs, (916) 978-5113

Callifornia Bay Delta Authority

Ken McGhee, Environmental Justice Coordinator, CALFED

Action Items for Reclamation (derived over the two days of meetings)

Flow Chart of Section 106 process with annotations of when the Winnemem Wintu can have input.

Notes of the two day meetings and tour.

Fish study including McCloud River analysis

Copies of the 1941 Act on the acquisition of Indian lands for the Central Valley Project and 1937 Act authorizing Shasta Dam.

List of Cultural Resources Laws

Express to Assistant Solicitor Alf Brandt the concern the Winnemem Wintu have about the effects on federal recognition believed to have been caused by the 1981 Indian cemetery transfer to BLM.

NCAO to search Red Bluff realty files for information on Indian lands or Winnemem Wintu documents, and share information by the first week in August.

Provide complete set of inundation maps for the SLWRI. Shasta area inventory report which includes inundation maps for the lake area will be provided to the Winnemem Wintu in the Aug 11th workshop.

Draft Discussion Notes

Description of Shasta Dam Water Resources Investigation

Donna discussed the following points:

Purpose of SLWRI:

1. Study the potential to raise the height of Shasta Dam between 6.5 to 18.5 feet (5 initial alternatives), to increase storage for 1) anadromous fish survival (by increasing the cold water pool), 2) water supply reliability, 3) ecosystem restoration, 4) flood damage reduction along the upper Sacramento River, and 5) hydropower generation.
2. Also included is an assessment to restore abandoned gravel mines to prevent fish entrapment, and to improve of fisheries downstream of the dam.
3. Authority to investigate the dam raise is provided by PL 96-375, 1980. This authority is to conduct a feasibility study only. Reclamation has no authority from Congress to construct any new structures at Shasta Dam at this time.

Other CALFED Storage Investigations:

Increase storage on the Upper San Joaquin River, with raising Friant Dam (near Fresno) as an option.

Raise Los Vaqueros Dam, in Contra Costa Co.

Evaluate a new off-stream reservoir (called North-of-Delta Offstream Storage Investigation) west of Orland.

Increase storage in the Delta.

4. Shasta Dam Operations for flood control are determined by the Corps of Engineers. Reclamation has initiated discussions with the COE to assess whether more water could be stored for a longer period in the reservoir.

Questions Raised/ Responses Given:

Who makes the decision to construct any new structures at Shasta? ANS:

Recommendations to go forward are made by the Mid-Pacific Regional Director, Kirk Rodgers, to Reclamation's Commissioner, John Keys, and then to the Secretary of Interior. Ultimately, it is Congress that must decide to provide authorization to construct, and to appropriate the funding.

Doesn't proposed CALFED legislation which passed in the House of Representatives this month negate congressional approval? ANS: Yes, in part. It says the Secretary of Interior can approve project construction, unless the congress intervenes in 90 days, but the Congress still needs to appropriate construction funding. The House version of the bill still needs to go to the Senate.

Aren't all the CALFED projects and programs connected? ANS: Yes, the entire CALFED program is directed at a host of California water problems, mainly focusing on the delta.

Will some one balance the 5 storage projects in terms of how much storage you can get from each? Is it not possible that by increasing storage in some other location then Shasta Dam, you will not need the Shasta Dam contribution? ANS: First Part—To the extent of determining how much storage is feasible from each of the storage projects the answer is yes. Second Part -- Yes, it may be possible, but the cost for greatly increased storage in one facility will need to be balance with the costs and who pays .

What about the cost share? ANS: Under Reclamation Law, the SLWRI will need to find non-federal, cost share partners to raise Shasta Dam. At this point no entity has come forward. The amount of this cost share may be determined by placing a monetary value on the benefits to be received by the cost share entity.

Does the availability of a cost share partner drive the decision to construct the project?

ANS: Under Reclamation law we can not construct a project without a cost share partner.

Can the public drive the process? ANS: The public has a voice in the process which is the reason NEPA requires a public scoping of SLWRI and a public release and comment period on the SLWRI EIS/EIR. Conceivably if the majority of citizens are either against or in favor of the project, it will have an effect on the outcome of the Record of Decision.

Who makes the Record of Decision? ANS: Regional Director Kirk Rodgers. The ROD is not only the record of decision . . . it is the decision regarding Reclamation's judgment as to the most likely alternative to solve the problem the project is proposed to solve.

Do our concerns matter? ANS: All comments from all interested citizens have value and must be assessed under NEPA.

Wintu comment – “It appears the Metropolitan Water (LA) may be assessing how this project may help LA”. Reclamation is not aware of any specific interest from MWD in the Shasta project.

Wintu comment – “The management of Shasta Reservoir’s operations could be better”.

What is the inflow v. outflow for Shasta Lake? ANS: On an average year ,5.5 M ac-ft flows into Shasta Lake and 4.5 M ac-ft is stored.

It seems that Reclamation is looking only at making the dam higher, what about other things that may be able to contribute just as much water such as water conservation and metering? ANS: Other CALFED programs such as Water Use Efficiency are assessing the potential to conserve water in urban and agricultural environments, other CALFED programs assess groundwater banking . However, Reclamation is not currently evaluating water conservation in SLWRI. In the near future, Reclamation will hold a “Scoping” meeting for the public to tell Reclamation the kinds of things the National Environmental Policy Act (NEPA), Environmental Impact Statement (EIS) should evaluate. Under NEPA all alternatives are initially given “equal footing” they are then screened for feasibility. Some may fall to the wayside because of high cost, lack of technical feasibility, or not meeting the needs of the proposed project.

What are the approximate costs of raising Shasta Dam? ANS: 6 ½ feet raise may cost \$280 M, and provide 300,000 ac-ft (a dry year yield of 75,000* ac-ft). The 18 ½ feet raise may cost \$480 M and provide 630,000 ac-ft (a dry year yield of 150,000* ac-ft.). CALFED’s goal is to develop an additional storage capacity of 6 ½ M ac-ft in the state. It was noted by Reclamation that the CALFED website has some incorrect information on it regarding economies of scale when referring to the amount of storage v. cost. [*dry yield is based on the driest period on record, 1928-1934]

Who says California needs an additional 6 ½ M ac-ft? ANS: In the CALFED Programmatic EIS/R, up to 6 MAF was the identified need. Of that, the storage element could potentially provide an additional 950 TAF of surface storage via In Delta - 250 TAF, Shasta Enlargement - 300 TAF and Los Vaqueros Expansion - 400 TAF. Groundwater storage needs were between 500 TAF to 1 MAF.

Wintu comment – “completing all 5 storage projects will not solve California’s water problems.”

What is the cost of the “no action alternative”? ANS: It has not been calculated.

Cultural Resources Discussion

Jim West discussed the application of federal cultural resource laws to SLWRI. Reclamation also promised to provide a list of the subject laws that may be applicable to SLWRI. Jim explained that at this time Reclamation has not defined what the “undertaking” is under the National Historic Preservation Act (NHPA). Once this is defined (after the public scoping, and the alternatives have been defined) Reclamation will enter into a “programmatic agreement” with the State Historic Preservation Officer, Advisory Council on Historic Preservation, and consulting parties. An approximate target date for the initiation of the programmatic agreement is Spring 2005.

Jim indicated that at this point in time he considers the Winnemem Wintu as an “interested party” under NHPA. Jim further expressed that the Winnemem Wintu would be consulted but until an undertaking is defined, and a programmatic agreement initiated, he can not commit to “consulting party” status for the Winnemem Wintu. The State Historic Preservation Officer and Advisory Council on Historic Preservation would be consulted in who is to be considered a consulting party.

Jim shared that Reclamation seeks any information that the Winnemem Wintu are willing to provide about the cultural resources in the vicinity of the McCloud.

Jim expressed that the Winnemem Wintu could request consideration as a consulting party, in writing, to Reclamation’s Mid-Pacific Regional Director, Mr. Kirk Rodgers.

Jim outlined other Cultural Resource requirements such as defining the Area of Potential Effect and the inventory and evaluation of sites. Jim stated that in his view, any raise of Shasta Dam will have an effect on cultural resources.

A discussion of Indian cemeteries commenced and Jim indicated that in the case of the Shasta Reservoir Indian Cemetery, descendants approved re-internment. Jim further expressed that controversy about who can be buried in these cemeteries currently exists, not only here but at Pin Cushion Mountain on the Table Mountain Rancheria near Fresno.

Jim expressed that federal cultural resource laws pertain to federal lands and that state cultural resource laws will apply to state lands. Jim indicated that under Section 106 of NHPA Reclamation is required to consult with relevant federally recognized tribes and interested parties to determine if an undertaking will potentially impact cultural resources.

As requested by the Winnemem Wintu the following is a list of cultural resource laws that may apply to the SLWRI:

- [American Indian Religious Freedom Act of 1978](#)

- [Antiquities Act of 1906](#)
- [Archaeological Resources Protection Act of 1979 \(as amended\)](#)
- [Archeological and Historic Preservation Act of 1974 \(Moss-Bennett\)](#)
- [Historic Sites Act of 1935](#)
- [National Historic Preservation Act of 1966 \(as amended\)](#)
- [Native American Graves Protection and Repatriation Act of 1990 \(NAGPRA\)](#)
- [Reservoir Salvage Act of 1960 \(as amended\)](#)

Summaries of regulations governing Reclamation's cultural resources management activities.

- [National Register of Historic Places \(36 CFR Part 60\)](#)
- [Determination of Eligibility for Inclusion of the National Register of Historic Places \(36 CFR Part 63\)](#)
- [Curation of Federaly Owned and Administered Archaeological Collections \(36 CFR Part 79\)](#)
- [Protection of Historic Properties \(36 CFR Part 800\)](#)
- [Protection of Archaeological Resources \(43 CFR Part 7\)](#)

Standards and Guidelines Pertaining to Reclamation's Cultural Resources Management activities.

- [The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act](#)
- [The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation](#)
- [The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings](#)
- [The Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings](#)

Summaries of Executive Orders pertaining to cultural resources and cultural resource management:

- [Executive Order 11593: Protection and Enhancement of Cultural Environment](#)
- [Executive Order 13006: Locating Federal Facilities on Historic Properties](#)
- [Executive Order 13007: Indian Sacred Sites](#)
- [Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations](#)

Sources for cultural resource laws and information:

•[Conservation statutes \(1850-1920\)](#) (For history buffs: historical laws compiled by the Library of Congress)

Questions Raised/ Responses Given, regarding Cultural Resources:

Can Reclamation provide the reference in the law that designated the Shasta Reservoir Indian Cemetery? ANS: Legislation entitled "Acquisition of Indian Lands for the Central Valley Project, Sec. 4, (Act of July 30, 1941, ch.334, 55 Stat.612). "As to any Indian cemetery lands required for the project, the Secretary of the Interior is authorized, in his discretion, in lieu of requiring payment therefore, to establish cemeteries on other lands that he may select and acquire for the purpose, and to remove bodies, markers, and other appurtenances to the new sites. All costs incurred in connection with any such relocation shall be paid from moneys [sic] appropriated for the project. All right, title, and interest of the Indians in the lands within any cemetery so relocated shall terminate and the grant of title under the Act take effect as of the date the Secretary of the Interior authorizes the relocation. Sites of the relocated cemeteries shall be held in trust by the United States for the appropriate tribe, or family, as the case may be, and shall be nontaxable.

Doesn't the ACHP have a conflict of interest with federal agencies implementing NHPA? ANS: The Advisory Council for Historic Preservation is an independent federal agency and does not report to the Secretary of the Interior on matters before the Council. (However, the Secretary of the Interior is a permanent member of the Council)

Discussion in Ceremonial House, Kerekmet Village, 2:00 pm

No notes were taken in the Ceremonial House. Here are Reclamation's recollections:

The Winnemem Wintu believe that no good will come to them by raising Shasta Dam, and that they are the original caretakers of this land, and will always defend their rights to occupy and protect the land. The Winnemem Wintu can not allow the Dam to be raised, to do so would mean cultural genocide for the remaining Winnemen Wintu.

The Winnemem Wintu have several grievances which Caleen Sisk Franco articulated as follows:

Original 1851 treaty between the Winnemem Wintu and the U.S. was not ratified by Congress.

Legislation enacted on July 30, 1941, entitled "Acquisition of Indian Lands for the Central Valley Project, was never acted upon by the Secretary. The Winnemem Wintu expressed that there were 4000 acres of allotted trust land, now under the lake, that were not replaced or compensated.

Under Public Land Order 5790, Reclamation, in January 1981, transferred the Shasta Lake

Indian Cemetery to the BLM, without the knowledge of the Winnemem Wintu. They believe that the public land order has diminished the W. Wintu's efforts to become federally recognized because BLM can not hold land in trust, and in their view, land in trust is pivotal for federal recognition.

SLWRI will inundate sites of cultural importance to the W. Wintu, and in their view, history will repeat itself.

Frank expressed that Reclamation can not advocate for Indians or any other entity, and that he can only raise the Winnemem Wintu concerns to his management. He further indicated that none of his colleagues in the ceremonial house are decision makers for Reclamation. The Winnemem Wintu expressed that they may need a meeting with Reclamation's top officials.

Frank indicated that tomorrow's meeting with Reclamation's Northern California Area Manager, Michael Ryan, and Security Officer, Ron Kingsley, is about the Winnemem Wintu's protest (correctly called a ceremonial war dance) at Shasta Dam. Frank conveyed that no one is disputing the Winnemem Wintu's first amendment right to be present on Shasta Dam property to peacefully express their dissent. However, there are concerns about the dates, ceremonial weapons and other matters about the ceremony that Michael and Ron would like to discuss with the Winnemem Wintu.

At about 4:00 pm Reclamation left the ceremonial house and Kerekmet Village.

Thursday, July 15, 2004
Tour with BOR and the Winnemem Wintu
on
Shasta Lake Water Resources Investigation, Shasta County

1. 9:30 a.m. Tour and discuss cultural and religious sites of importance to the Winnemem Wintu. Meet at the McCloud Bridge.
2. 2:30 p.m. Meet with Shasta Dam security official Ron Kingsley and Northern California Area Manager Michael Ryan.

TOUR, West Bank of the McCloud, South of Bridge

Attendees: Calleen Sisk-Franco, Mark Franco, Gary Mulcahy, Brock Dahlman, Claire Cummings
Donna Garcia, Jim West, Russ Smith, Frank Perniciaro

Donna showed some inundation maps indicating that a 20 ft dam raise would put about 14 feet of water on top of the existing McCloud River Bridge deck. The Winnemem Wintu expressed that

they would like copies of all the inundation maps.

Caleen pointed out the approximate location of the Baird Indian Community, now located under water. She indicated that about 400 people lived in Baird before the flooding. She believes that there may be as many as 400 Indian allotments, over 4000 acres total, under the lake that were not compensated by the U.S.

Frank asked if the Winnemem Wintu have sought legal guidance from California Indian Legal Services. Caleen indicated that CILS has their plate full with gaming tribe legal issues.

Caleen indicated that they need access to the river bank to reach sacred sites at the proper time, raising Shasta Dam will cause the loss of these sites.

Mark told the group about the Dribalis (sp?) massacre that took place in 1867, 30 Winnemem Wintu were killed by marauding whites.

Caleen shared that the Redding Rancheria are a “created tribe” a mix of Indian peoples who were landless. She expressed that even though the Rancheria may express an interest in the McCloud they are not from here (McCloud-Baird area), and that no other tribe speaks for the Winnemem Wintu on issues regarding the McCloud.

Jim expressed that NAGPRA first assesses tribal (federally recognized) affiliation with discovered human remains, except in cases where a direct lineal descendency can be proven by the party seeking possession of the remains.

The Winnemem Wintu expressed that all of these cultural issues require varied expertise, expertise they believe Reclamation does not currently possess. Jim responded that it is his intent to contract with credentialed ethnologists, ethno-botanists and perhaps other highly specialized scientists to conduct the cultural resource studies for the SLWRI.

Caleen lead the group to the rock that is used for female puberty ceremonies, near the village site of Little Kaibay. This is the only site on the McCloud that remains for this ceremony, and it is interconnected by other ceremonial sites along the McCloud, such as collecting water from certain springs and using the water in other places.

Caleen estimated that there were about 20 Winnemem Wintu villages between McCloud River Bridge and McCloud Dam.

The subject of agreements with Reclamation was discussed. Caleen expressed that they have a USFS (Shasta – Trinity) agreement indicating the role the Winnemem Wintu have in activities within the Forest, and indicated a need for an agreement with Reclamation. Jim asked for a copy of the agreement to learn how the USFS sought Winnemem Wintu input. The Winnemem Wintu expressed dissatisfaction with what they believe is an unwillingness on the part of Jim to work with them on furthering the Winnemem Wintu’s interests in McCloud cultural issues. Jim

expressed that this is not the case, and that the federal cultural laws mandate procedures and processes for conducting cultural resource work that he must follow.

TOUR, East Bank of the McCloud

Caleen pointed out a rock of spiritual importance to children. She expressed that over the years so few sites of religious importance remain accessible on the McCloud that it has affected the physical health of the Winnemem Wintu.

Meeting at Shasta Dam Auditorium, 3:15 p.m., with Shasta Dam security official Ron Kingsley and Northern California Area Manager Michael Ryan.

Gary expressed that it is the intent of the W. Wintu to spend 4 days, 24 hours/day, sometime over the Sept. 11 period, at Shasta Dam, to conduct a "ceremonial war dance" at the Dam. Gary defined the war dance as a "religious and sacred ceremony". Gary said that the Winnemem Wintu have no intent to be close to any [restricted access] structures or facilities at the Dam.

Mark indicated that Shasta Dam does harm the Winnemem Wintu, and that the U.S. is in breach of trust over its obligations in the 1941 Act [Acquisition of Indian Lands for the Central Valley Project]. Mark said that this is a declaration of war on the United States. Mark further stated that he has no intent on harming people or property. Mark indicated that they have no need to bring traditional weapons to the dam, "their hearts are their weapons". Mark indicated that the ceremonial fire is not a bonfire but a small camp fire that must burn 24 hours/day.

Frank apologized to the group for incorrectly referring the ceremonial war dance as a "protest".

Michael Ryan expressed to the W. Wintu that he could not promise them that they could be present on dam property 24 hours per day, and that the W. Wintu request would require further study by Reclamation. Michael did offer a site at the Dam where the W. Wintu could hold the ceremony during the Dam's standard visitor hours, 6am - 10 pm. Although the site was acceptable to the W. Wintu, confining the ceremonial war dance to visitor hours was not. The W. Wintu response was that Reclamation may need to forcibly remove them after hours.

Caleen shared that BIA benefits stopped around 1985.

Caleen expressed that she requests that Reclamation take back the Shasta Reservoir Indian Cemetery into trust and transfer the land to the BIA, as the 1958 BOR-BIA letter suggests. Or have the BLM transfer the land directly to BIA. Caleen further indicated that had the land been in trust for them in the first place they would have had recognition as a "tribe" by now. Frank said he would share this concern with Assistant Solicitor Alf Brandt.

Michael Ryan indicated he would have Russ Smith and his staff locate records at Reclamation's

Red Bluff Office and contact the Winnemem Wintu by the first week in August.

Meeting came to a close about 4:15 pm.

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